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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/083,810	02/27/2002	Joseph Garner	1001.1495101	6541

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EXAMINER

SAM, CHARLES H

ART UNIT PAPER NUMBER

3731

DATE MAILED: 03/04/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/083,810

Applicant(s)

GARNER ET AL.

Examiner

Charles H. Sam

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 5,8,9,12-16 and 19-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,6,7,10,11,17 and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION*****Election/Restrictions***

Applicant's election without traverse of the invention of Group I, Species I (Figures 1-2) in Paper No. 8 is acknowledged. Thus, claims 5,8,9,12-16 and 19-29 are withdrawn from consideration.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3,6,17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cathcart et al. (6,165,179) in view of Pinchuk et al. (6,254,633). Cathcart discloses a filter system comprising a wire 31 having a proximal end and a distal end, a filter 23 for collecting debris from a body lumen, an outer shaft 13, and a dilator tip 20 slidably disposed in the distal sheath and movable between a distally advanced position and a proximally retracted position; Cathcart is lacking in not having a dilator tip locating at least in part beyond the distal sheath. However, Pinchuk discloses a delivery device 20 comprising a dilator tip 30 extending from the distal end 23 of outer sheath 22. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to modify Cathcart by extending the dilator tip beyond the distal sheath in view of Pinchuk to aid navigation of the device through a body lumen.

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Regarding claim 2, Cathcart discloses a dilator tip 20 comprising a generally circular

cross section and a conical shaped distal portion.

Regarding claim 3, Cathcart discloses a resilient inner shaft 17 disposed in the outer

shaft 13.

Claims 4, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cathcart et al. (6,165,179) in view of Pinchuk et al. (6,254,633) as applied to claims 1-3 and 6 above, and further in view of Cassell et al. (5,827,324). Cathcart in view of Pinchuk discloses the invention as claimed except for a coil spring. However, Cassell discloses a distal portion 50 which is formed of a coil 68 which is encapsulated in a polymer material 70. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to further modify Cathcart (inner shaft 17) by including a coil spring inside a polymer material to provide stiffening member with contraction and extension force.

Claims 7, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cathcart et al. (6,165,179) in view of Pinchuk et al. (6,254,633) as applied to claims 1-3 and 6 above, and further in view of Tsugita et al. Cathcart in view of Pinchuk discloses the invention as claimed except for a coil spring disposable about a portion of the inner shaft. However, Tsugita discloses a filter system comprising a filter 203, an elongate member 207 slidably received within sheath 201, and a coil spring 206 disposed helically about elongate member 207. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to further modify

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Cathcart by providing a coil spring around the inner member 17 to provide the sliding motion of the dilator tip 20.

Regarding claim 7, Tsugita discloses the inner shaft 201 substantially shorter than the length of the outer shaft 211. See Figure 15.

Regarding claim 10, Tsugita discloses a resilient member 211 disposed about the inner shaft 201.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles H. Sam whose telephone number is (703) 305-5650. The examiner can normally be reached on Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano can be reached on (703) 308-2496. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3590.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

chs  
February 18, 2004



MICHAEL J. MILANO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700